

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Hearing Date: May 15, 2019

Hearing Time: 10:00 a.m.

In Re:

Chapter 13

**OLUCHI NWOKOCHA
a/k/a OLUCHI NWANGANGA,**

Case No. 19-22047(rdd)

Debtor.
_____X

**NOTICE OF MOTION FOR AN ORDER PURSUANT TO §§541-543 AUTHORIZING THE
TURNOVER OF INSURANCE PROCEEDS AND ALL FUNDS BEING HELD BY ALLSTATE
INDEMNITY COMPANY, AND PURSUANT TO §§ 361, 362 AND 363 AUTHORIZING THE
DEBTOR'S USE OF SUCH FUNDS TO REBUILD AND TO MAINTAIN EQUITY IN
PROPERTY LOCATED AT 41 SUMMIT PARK ROAD, NEW HEMPSTEAD, NY 10977**

S I R S:

PLEASE TAKE NOTICE that the undersigned, being the attorneys for the above referenced Debtor, will move the Court located at 300 Quarropas Street, White Plains, New York, on **May 15, 2019 at 10:00 a.m.** for an Order pursuant to 11 U.S.C. § 361, 362, and 363 authorizing the turnover of insurance proceeds and all funds behind held by ALLSTATE INDEMNITY COMPANY (“ALLSTATE ”) and authorizing the Debtor’s use of such funds to rebuild and to maintain equity in property located at 41 Summit Park Road, New Hempstead, NY 10977.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief Debtor seeks to obtain must be in writing, conform to the requirements of the Bankruptcy code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Southern District of New York, and must be filed and served no later than three (3) business days prior to the hearing date (“Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that pursuant to General Order M-182, any objection filed by parties with representation shall be filed on or before the objection Deadline (i) through the Bankruptcy Court’s Electronic Filing System which may be accessed at the Bankruptcy Court’s internet web at <http://www.nysb.uscourts.gov>, and (ii) in portable document format (PDF) using Adobe Exchange Software for conversion.

PLEASE TAKE FURTHER NOTICE that any party that is either without legal representation, or that is unable to file documents electronically or create documents in PDF format, shall file its objection on or before the objection Deadline in either Word, WordPerfect or DOS text (ASCII) format on 3-1/2" floppy diskette in an envelope clearly marked with the case name, case number, type and title of document, document number of the document to which the objection refers and the file name of the documents.

PLEASE TAKE FURTHER NOTICE that a "hard copy" of any objections must be hand delivered to the Chambers of the Honorable, at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York 10601 on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that objections, if any, must be served in accordance with the provisions of General Order M-182 so that they are received on or before the Objection Deadline by The Law Offices of Allen A. Kolber, Esq., 134 Rt. 59, Suite A, Suffern, NY 10901

Dated: Rockland County, New York
February 18, 2019

LAW OFFICES OF ALLEN A. KOLBER, ESQ.

By: /s/ Allen A. Kolber
Allen A. Kolber, Esq. (AK0243)
Attorneys for Debtor
134 Rt. 59, Suite A
Suffern, NY 10901
(845) 918-1277

TO: Krista M. Preuss, Esq., Ch. 13 Trustee
399 Knollwood Road, Suite 102
White Plains, NY 10603

Allison Schoenthal, Esq.
Nicole E. Schiavo, Esq.
Hogan Lovells US LLP
Attorneys for CIT Bank
875 Third Avenue, New York, NY 10022

Allstate Indemnity Company
Attn: President
2775 Sanders Road
Northbrook, IL 60062

ALL PARTIES WHO HAVE FILED A NOTICE OF APPEARANCE IN THIS CASE AND
PARTIES OF INTEREST LISTED ON ANNEXED SERVICE LIST

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

OLUCHI NWOKOCHA
a/k/a OLUCHI NWANGANGA,

Debtor.

Hearing Date and time:
May 15, 2019 at 10:00 a.m.

Chapter 13
Case No. 19-22047 (rdd)

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APPLICATION PURSUANT TO 11 U.S.C. §§ 541-543 FOR TURNOVER OF INSURANCE PROCEEDS AND ALL FUNDS BEING HELD BY ALLSTATE INDEMNITY COMPANY (“ALLSTATE”) AND PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AUTHORIZING THE DEBTOR’S USE OF SUCH FUNDS TO REBUILD AND TO MAINTAIN EQUITY IN PROPERTY LOCATED AT 41 SUMMIT PARK ROAD, NEW HEMPSTEAD, NY 10977

OLUCHI NWOKOCHA a/k/a OLUCHI NWANGANGA, in support of Debtor’s motion pursuant to 11 U.S.C. §§ 541-543 to authorize the turnover of insurance proceeds being held by ALLSTATE INDEMNITY COMPANY (“ALLSTATE”), relating to mortgaged property located at 41 Summit Park Road, New Hempstead, NY 10977, and pursuant to §§ 361, 362, 363 authorizing the Debtor’s use of the insurance proceeds to rebuild and to maintain equity in said property, respectfully represents:

Background and Jurisdiction

1. On January 11, 2019, the Debtor filed a Voluntary Petition for relief under Chapter 13 of the Bankruptcy Code.
2. The Chapter 13 Trustee Krista M. Preuss, Esq., has been appointed as Trustee.
3. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory bases for the relief requested herein are §§ 105(a), 361 362 and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

5. Creditor CIT Bank, N.A. ("CIT BANK") is subject to the jurisdiction of this Court in that it holds the only mortgage on Debtor's primary residence located at 41 Summit Park Road, New Hempstead, NY 10977.
6. Allstate Indemnity Company ("ALLSTATE"), is subject to the jurisdiction of this Court in that it is holding the sum of \$45,357.00 of insurance funds toward the rebuilding of Debtor's primary residence.

Insurance Proceeds held by Allstate

7. On January 21, 2017, the Debtor's premises suffered water damage to the main level, basement and stairs of her primary residence located at 41 Summit Park Road, New Hempstead, NY 10977.
8. Such damage necessitated repairs to the main level kitchen, dining room, living room, entry foyer, hallway, hall closets, bathrooms and bedrooms, and to the basement level stairway, bedrooms, bathrooms and family room totaling \$50,867.44. (See Allstate Adjuster's Report dated February 8, 2017 annexed hereto as Exhibit "A").
9. On February 27, 2017, Allstate issued a check, net of deductible, in the sum of \$45,357.00. (See Allstate check annexed hereto as part of Exhibit "A").
10. Since February of 2017, the Debtor has been demanding that her mortgagee, CIT Bank, N.A., co-sign the check so that the Debtor can complete the repairs to her home.
11. On or about February 6, 2017, CIT Bank commenced a foreclosure action against the Debtor and her ex-husband in the U.S. District Court, Southern District of New York, under Civil Action No. 17-cv-00874(kmk).
12. At the time the foreclosure action was commenced, the Debtor was struggling to pay her mortgage due to the fact that she was embroiled in a litigious divorce proceeding with her ex-husband.

13. During the foreclosure litigation, the Debtor, again through her attorneys, demanded that CIT Bank accept the \$45,357 in insurance funds as a pay down of the mortgage arrears. (See correspondence annexed hereto as Exhibit "B").
14. CIT Bank refused to agree to such terms.
15. On January 11, 2019, the Debtor was forced to file this Voluntary Chapter 13 case in order to stop a foreclosure sale of the Debtor's home.
16. As of this date, CIT Bank has never agreed to endorse the insurance check so that the Debtor may complete repairs to her home.
17. During the months of February through July, 2017, the Debtor was forced to make repairs to her home by herself using a private contractor.
18. Attached as Exhibit "C" please find proof of repairs and payments made to the Debtor's private contractor.
19. The Debtor, however, was only able to complete repairs to the main floor of the home. The basement level of the Debtor's split ranch remained unrepaired and damaged.
20. The failure to repair and maintain the Debtor's property dramatically jeopardizes Debtor's ability to maintain the equity in her property and to reorganize her debts in the instant Chapter 13 Bankruptcy case.

Demand for Insurance Funds

21. ALLSTATE is obligated to pay the sum of 45,357.00 plus interest thereon directly to the Debtor pursuant to 11 U.S.C. §§ 541-543.
22. The \$45,357.00 insurance funds are an asset of the Debtor's Bankruptcy estate.

The Debtor's Intentions to use the cash collateral in this Chapter 13 Case:

23. Debtor respectfully requests that this Court allow the use of the insurance funds to rebuild her primary residence to prevent further damage and to increase the equity in the property.
24. Pursuant to the Retainer Agreement signed between the Debtor and her attorney, Allen A. Kolber, Esq., Debtor paid the sum of \$0.00 to her attorney for the filing of this case, but

agreed to pay the sum of \$6,500.00 fees to be collected through the recovery of the insurance proceeds. (See Retainer Agreement annexed hereto as Exhibit "D").

25. Debtor respectfully requests that this Court issue an Order directing ALLSTATE to issue a new check in the sum of \$45,357.00 plus interest thereon as follows:

- a. \$38,857.00 plus interest at 9% from February 27, 2017 directly payable to OLUCHI NWOKOCHA a/k/a OLUCHI NWANGANGA.
- b. \$6,500.00 directly payable to The Law Offices of Allen Kolber, Esq. at 134 Route 59, Suffern, NY 10901.

WHEREFORE, Debtor respectfully requests that the Court grant the instant Motion to authorize the turnover of the insurance proceeds in the sum of \$45,357.00 plus interest thereon from February 27, 2017, being held by ALLSTATE pursuant to 11 U.S.C. §§ 541-543; and to authorize the Debtor's use of such proceeds to rebuild and to maintain equity in property located at 41 Summit Park Road, New Hempstead, New York pursuant to §§ 361-363, and for such other and further relief as to this Court may seem just and proper.

Dated: Rockland County, New York
February 18, 2019

LAW OFFICES OF ALLEN A. KOLBER, ESQ.

By: /s/ Allen A. Kolber
Allen A. Kolber, Esq. (AK0243)
Attorney for Debtor
134 Rt. 59, Suite A
Suffern, NY 10901
(845) 918-1277

/s/ Oluchi Nwokocha a/k/a Oluchi Nwanganga
Oluchi Nwokocha a/k/a Oluchi Nwanganga

/s/ Allen A. Kolber
NOTARY PUBLIC, State of New York
No. 02KO4972647
Qualified in Rockland County
Commission Expires December 29, 2022

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

OLUCHI NWOKOCHA
a/k/a OLUCHI NWANGANGA,

Debtor.

Chapter 13
Case No. 19-22047(rdd)

-----X
**ORDER GRANTING MOTION OF DEBTOR PURSUANT TO 11 U.S.C. §§ 541-543
FOR THE TURNOVER OF INSURANCE PROCEEDS AND ALL FUNDS BEING
HELD BY ALLSTATE INDEMNITY COMPANY. AND PURSUANT TO 11 U.S.C. §§
361 AND 362 AND 363 AUTHORIZING THE DEBTOR'S USE OF SUCH FUNDS TO
REBUILD TO MAINTAIN EQUITY IN PROPERTY LOCATED AT 41 SUMMIT
PARK ROAD, NEW HEMPSTEAD, NEW YORK 10977**

UPON the Debtor's Motion filed February 20, 2019, for an Order pursuant to 11 U.S.C.

§§ 541-543 for the turnover of insurance proceeds in the sum of \$45,357.00 being held by ALLSTATE INDEMNITY COMPANY relating to mortgaged property located at 41 Summit Park Road, New Hempstead, New York, and pursuant to 11 U.S.C. §§ 361-363 to authorize the Debtor's use of such funds to rebuild to maintain equity in property located at 41 Summit Park Road, New Hempstead, New York; and it appearing that due and sufficient notice of the Motion and the hearing therein was provided; and upon the record of the hearing held by the Court on the Motion on **May 15, 2019**; and, after due deliberation, and in accordance with the provisions of 11 U.S.C. §§ 541-543 and §§ 361 and 362 and 363, and good and sufficient cause appearing, it is hereby

ORDERED that insurance proceeds in the sum of \$45,357.00 being held by ALLSTATE INDEMNITY COMPANY be turned over to the Debtor pursuant to 11 U.S.C. §§ 541-543, and that Debtor is authorized to use such funds to rebuild to maintain equity in property located at 41 Summit Park Road, New Hempstead, New York pursuant to §§ 361 and 362 and 363.

Dated: White Plains, New York
_____, 2019

HON. ROBERT D. DRAIN
U.S. Bankruptcy Judge